

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA**

ROBERT CHARLES JONES,

No. 2:20-CV-1690-TLN-DMC-P

Plaintiff,

## ORDER

## RIO COSUMNES CORRECTIONAL CENTER,

Defendant.

Plaintiff, a prisoner proceeding pro se, brings this civil rights action under 42 U.S.C. § 1983. Pending before the Court is Plaintiff's original complaint, ECF No. 1.

The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). The Court must dismiss a complaint or portion thereof if it: (1) is frivolous or malicious; (2) fails to state a claim upon which relief can be granted; or (3) seeks monetary relief from a defendant who is immune from such relief. See 28 U.S.C. § 1915A(b)(1), (2). Moreover, the Federal Rules of Civil Procedure require that complaints contain a “. . . short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). This means that claims must be stated simply, concisely, and directly. See McHenry v. Renne, 84 F.3d 1172, 1177 (9th Cir. 1996) (referring to Fed. R. Civ. P. 8(e)(1)). These rules are satisfied if the

1 complaint gives the defendant fair notice of the plaintiff's claim and the grounds upon which it  
2 rests. See Kimes v. Stone, 84 F.3d 1121, 1129 (9th Cir. 1996). Because Plaintiff must allege  
3 with at least some degree of particularity overt acts by specific defendants which support the  
4 claims, vague and conclusory allegations fail to satisfy this standard. Additionally, it is  
5 impossible for the Court to conduct the screening required by law when the allegations are vague  
6 and conclusory.

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## 8 I. PLAINTIFF'S ALLEGATIONS

9 Plaintiff names a single defendant – the Rio Cosumnes Correctional Center, which  
10 is a county jail. See ECF No. 1, pg. 1. According to Plaintiff:

11 This lawsuit is to reference "Covid-19" and that the CDC recommendation  
12 are not being met. Ther [sic] is no social distancing, mask, unsanitary  
13 environment, and that I am inicent [sic] till [sic] proven guilty. My claim  
14 does not meet a death sentence. Without any medical testing being done,  
violation of California Article 1-6 and being violated the 8<sup>th</sup> and 14<sup>th</sup>  
amendment with due process of law subjecting me to cruel and unusual  
punishment.

15 Id. at 3.

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## 17 II. DISCUSSION

18 Municipalities and other local government units are among those "persons" to  
19 whom § 1983 liability applies. See Monell v. Dep't of Soc. Servs., 436 U.S. 658, 690 (1978).  
20 Counties and municipal government officials are also "persons" for purposes of § 1983. See id. at  
21 691; see also Thompson v. City of Los Angeles, 885 F.2d 1439, 1443 (9th Cir. 1989). A local  
22 government unit, however, may not be held responsible for the acts of its employees or officials  
23 under a respondeat superior theory of liability. See Bd. of County Comm'r's v. Brown, 520 U.S.  
24 397, 403 (1997). Thus, municipal liability must rest on the actions of the municipality, and not of  
25 the actions of its employees or officers. See id. To assert municipal liability, therefore, the  
26 plaintiff must allege that the constitutional deprivation complained of resulted from a policy or  
27 custom of the municipality. See id. A claim of municipal liability under § 1983 is sufficient to  
28 withstand dismissal even if it is based on nothing more than bare allegations that an individual

1 defendant's conduct conformed to official policy, custom, or practice. See Karim-Panahi v. Los  
2 Angeles Police Dep't, 839 F.2d 621, 624 (9th Cir. 1988).

3 Here, Plaintiff has not alleged a custom, policy, or practice of Defendant Rio  
4 Cosumnes Correctional Center which was the moving force behind the alleged constitutional  
5 violation.

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### 7 III. CONCLUSION

8 Because it is possible that the deficiencies identified in this order may be cured by  
9 amending the complaint, Plaintiff is entitled to leave to amend prior to dismissal of the entire  
10 action. See Lopez v. Smith, 203 F.3d 1122, 1126, 1131 (9th Cir. 2000) (en banc). Plaintiff is  
11 informed that, as a general rule, an amended complaint supersedes the original complaint. See  
12 Ferdik v. Bonzelet, 963 F.2d 1258, 1262 (9th Cir. 1992). Thus, following dismissal with leave to  
13 amend, all claims alleged in the original complaint which are not alleged in the amended  
14 complaint are waived. See King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987). Therefore, if  
15 Plaintiff amends the complaint, the Court cannot refer to the prior pleading in order to make  
16 Plaintiff's amended complaint complete. See Local Rule 220. An amended complaint must be  
17 complete in itself without reference to any prior pleading. See id.

18 If Plaintiff chooses to amend the complaint, Plaintiff must demonstrate how the  
19 conditions complained of have resulted in a deprivation of Plaintiff's constitutional rights. See  
20 Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). The complaint must allege in specific terms how  
21 each named defendant is involved, and must set forth some affirmative link or connection  
22 between each defendant's actions and the claimed deprivation. See May v. Enomoto, 633 F.2d  
23 164, 167 (9th Cir. 1980); Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

24 Finally, Plaintiff is warned that failure to file an amended complaint within the  
25 time provided in this order may be grounds for dismissal of this action. See Ferdik, 963 F.2d at  
26 1260-61; see also Local Rule 110. Plaintiff is also warned that a complaint which fails to comply  
27 with Rule 8 may, in the Court's discretion, be dismissed with prejudice pursuant to Rule 41(b).  
28 See Nevijel v. North Coast Life Ins. Co., 651 F.2d 671, 673 (9th Cir. 1981).

1 Accordingly, IT IS HEREBY ORDERED that:

2 1. Plaintiff's original complaint, ECF No. 1, is dismissed with leave to  
3 amend; and

4 2. Plaintiff shall file a first amended complaint within 30 days of the date of  
5 service of this order.

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7 Dated: March 23, 2021

  
8 DENNIS M. COTA  
9 UNITED STATES MAGISTRATE JUDGE

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